



## AlaFile E-Notice

03-CV-2020-901539.00

Judge: J. R. GAINES

To: TAPLEY FRANK JEROME  
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# NOTICE OF COURT ACTION

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

KRYSTAL KENDRICK ET AL V. GUARDIAN CREDIT UNION  
03-CV-2020-901539.00

A court action was entered in the above case on 2/21/2024 8:06:04 AM

ORDER

[Filer: ]

Disposition: GRANTED  
Judge: JRG  
Notice Date: 2/21/2024 8:06:04 AM

GINA J. ISHMAN  
CIRCUIT COURT CLERK  
MONTGOMERY COUNTY, ALABAMA  
251 S. LAWRENCE STREET  
MONTGOMERY, AL, 36104

334-832-1260



**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

KENDRICK KRYSTAL,	)	
FAYSON GLENDA,	)	
WILLIAMS JIMMY,	)	
Plaintiffs,	)	
	)	
V.	)	Case No.: CV-2020-901539.00
	)	
GUARDIAN CREDIT UNION,	)	
Defendant.	)	

**ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT**

Upon review and consideration of Plaintiff's Unopposed Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement, and the Settlement Agreement and accompanying exhibits thereto, all of which have been filed with the Court, it is HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. The Court has carefully reviewed the Settlement Agreement, as well as the files, records, and proceedings to date in the Action. The definitions in the Settlement Agreement are hereby incorporated as though fully set forth in this Order, and capitalized terms shall have the meanings attributed to them in the Settlement Agreement.

2. The Parties have agreed to settle the Action upon the terms and conditions set forth in the Settlement Agreement, which has been filed with the Court. The Settlement Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable, and adequate.

3. Plaintiffs, by and through counsel, have investigated the facts and law relating to the matters alleged in the Complaint, including legal research as to the sufficiency of the claims, and an evaluation of the risks associated with continued litigation, class certification, trial, and potential appeal.

4. The Settlement was reached as a result of extensive arms-length negotiations between counsel for Plaintiffs and counsel for Defendant.

5. The Settlement confers substantial benefits upon the Settlement Classes, and does so without the costs, uncertainties, delays, and other risks associated with continued litigation, class certification, trial, and potential appeal.

6. The Court conditionally certifies, for settlement purposes only, the following settlement class:

**APPSN Fee Class**. Any member of Defendant who had a checking account with Defendant and was assessed an Overdraft Fee that was charged (and not subsequently refunded) by Defendant from January 28, 2020 to November 30, 2022, inclusive, on a signature Point of Sale debit card transaction when the checking account had a positive available balance at the time the transaction was authorized but an insufficient available balance at the time the transaction was presented to Defendant for payment and posted to a member's checking account.

**Retry Fee Class**. All current or former members of Defendant who had a checking account with Defendant and were assessed an NSF Fee that was charged (and not subsequently refunded) by Defendant from January 1, 2015 to November 30, 2019, inclusive, for an ACH or check transaction that was re-submitted after previously being declined.

Excluded from the Settlement Classes are the Court and any members of the Court's family and staff.

7. The Court conditionally finds, for settlement purposes only and

conditioned upon entry of the Final Approval Order and Judgment and the occurrence of the Effective Date, that the prerequisites for a class action under Ala. R. Civ. P. 23 have been satisfied in that: (a) the number of members of the Settlement Classes is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Classes; (c) the claims of Plaintiffs are typical of the claims of the Settlement Classes for purposes of settlement; (d) Plaintiffs have fairly and adequately represented the interests of the Settlement Classes and will continue to do so, and Plaintiffs have retained experienced counsel to represent the Settlement Classes; (e) for purposes of settlement, the questions of law and fact common to the members of the Settlement Classes predominate over any questions affecting any individual members of the Settlement Classes; and (f) for purposes of settlement, a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. The Court also concludes that, because this action is being settled rather than litigated, the Court need not consider manageability issues that might be presented by the trial of this class action. In making these findings, the Court has exercised its discretion in conditionally certifying, for settlement purposes only, the Settlement Class.

8. The Court appoints the following as Class Counsel: (i) Lynn A. Toops of Cohen & Malad, LLP, J. Gerard Stranch, IV of Stranch, Jennings & Garvey, PLLC and F. Jerome Tapley of Cory Watson Attorneys. For purposes of these settlement approval proceedings, the Court finds that Class Counsel are competent and capable of exercising their responsibilities as Class Counsel.

9. The Court designates each of the following Plaintiffs as Class

Representatives: Krystal Kendrick, Glenda Fayson, Jimmy Williams, Tawanda Fayson and Eric Williams.

10. The Court further appoints KCC Class Action Services to serve as the Settlement Administrator.

11. The Final Approval Hearing shall be held before this Court on June 25, 2024 at 9:30 a.m., to determine whether the Settlement Agreement is fair, reasonable, and adequate and should receive final approval. The Court will rule on Class Counsel's motion for an award of attorneys' fees and expenses at that time. Papers in support of final approval of the Settlement Agreement and the Motion for Approval of Class Counsel's Fees and Expenses shall be filed with the Court according to the schedule set forth below. The Final Approval Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class. After the Final Approval Hearing, the Court may enter a Final Approval Order and Judgment in accordance with the Settlement Agreement that will adjudicate the rights of the Settlement Class Members with respect to the claims being settled.

12. Pending the Final Approval Hearing, all proceedings in the action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement and this Order, are stayed.

13. The Court approves, as to form and content, the following notice documents: (i) the Email (Postcard) Notice, attached as Exhibit 1 to the Settlement Agreement; and (ii) the Long Form Notice, attached as Exhibit 2 to the Settlement Agreement.

14. The Court finds the notices listed in the preceding paragraph, and the

plan of notice set forth in the Settlement Agreement, are reasonable, that they constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and that they meet the requirements of due process and Ala. R. Civ. P. 23. Specifically, the Court finds that the method of disseminating notice complies with Ala. R. Civ. P. 23 and due process because it constitutes a reasonable manner of providing notice to those Settlement Class Members who would be bound by the Settlement, constitutes the best practicable notice under the circumstances, provides individual notice to all Settlement Class Members who can be identified through a reasonable effort, and is reasonably calculated, under all the circumstances, to apprise the members of the Settlement Class of the pendency of this action, the terms of the Settlement, and their right to object to the Settlement or exclude themselves from the Settlement Class.

15. The Court orders that Notice shall be provided by the Settlement Administrator to the Settlement Class within 48 days from entry of this Order (the "Notice Date") according to the procedures set forth in Section 4 of the Settlement Agreement.

16. The Bar Date to Object and the Bar Date to Opt Out shall be 30 calendar days after the Notice Date. The Bar Date to Object and the Bard Date to Opt Out may be extended by written agreement of the parties through Class Counsel and Defendant's Counsel without further approval of the Court or notice to the Settlement Class, provided that the settlement website administered by the Settlement Administrator shall be promptly updated to reflect any extension of the Bar Date to Object and the Bar Date to Opt Out.

17. Each Settlement Class Member who wishes to be excluded from the

Settlement Class and follows the procedures set forth in Section 12 of the Settlement Agreement.

18. Any Settlement Class Member who submits a valid and timely request for exclusion may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement. Members of the Settlement Class who exclude themselves from the Settlement will not release their claims against the Defendant Releasees by operation of the Agreement and will not be bound by this Agreement or the Final Approval Order and Judgment.

19. Settlement Class Members who fail to submit a valid and timely request for exclusion pursuant to the Agreement this Order shall be bound by all terms of the Settlement Agreement and the Final Approval Order and Judgment, should one be entered, regardless of whether they have otherwise requested exclusion from the Settlement.

20. Any member of the Settlement Class who has not timely submitted a written request for exclusion from the Settlement Class, and thus is a Settlement Class Member, may ask the Court to deny approval by filing an objection. Settlement Class Members cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the action will continue. If any member of the Settlement Class wants that to happen, they must object in accordance with Section 13 of the Settlement Agreement.

21. Class Counsel shall file their Motion for Class Counsel's Fees, Costs and Service Awards no later than fourteen (14) days before the Bar Date to Object.

22. No later than fourteen (14) days prior to Final Approval Hearing, the Parties shall, individually or collectively, move the Court for entry of an order and judgment finally approving the Settlement, with Class Counsel filing a memorandum of points and authorities in support of the motion. Counsel for the Parties may also file a memorandum addressing any objections submitted to the Settlement.

23. These dates of performance may be extended by order of the Court, for good cause shown, without further notice to the Settlement Classes. Settlement Class Members may check the Settlement Website regularly for updates and further details regarding extensions of these dates of performance.

24. Defendant shall have the option to terminate the Settlement Agreement if five percent (5%) or more of the Settlement Class Members opt out of the Settlement. Defendant shall notify Class Counsel and the Court of its intent to terminate the Settlement Agreement pursuant to this option within 15 business days after the Bar Date to Opt Out, or the option to terminate shall be considered waived.

25. If the Settlement does not become effective or is rescinded pursuant to the Settlement Agreement, the Settlement and all proceedings had in connection therewith shall be without prejudice to the status quo ante rights of the Class Representatives and Defendant, and all Orders issued pursuant to the Settlement Agreement shall be vacated.

26. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Agreement.

**IT IS SO ORDERED, ADJUDGED, AND DECREED:**



**DONE this 21<sup>st</sup> day of February, 2024.**

**/s/ J. R. GAINES**  
**CIRCUIT JUDGE**

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